



JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas and Mining

JOHN R. BAZA  
*Division Director*

August 3, 2010

TO: Board of Oil, Gas & Mining

THROUGH: John R. Baza, Director 

FROM: Steve Schneider, Administrative Services & Policy Coordinator 

SUBJECT: Nonsubstantive Rule Amendments: Coal, Oil & Gas

The Division has identified nonsubstantive rule amendments which are appropriate for filing with the Division of Administrative Rules (DAR). These changes are a result of a thorough analysis of the 161 statutory cross-references within our Administrative Rules, plus one grammar error was also identified. These changes are important for the proper reading of rules within the Coal Program and the Oil and Gas Program.

Nonsubstantive rule amendments can be filed by our Division without a formal rulemaking process per the Administrative Rulemaking Act. The Division's practice is to advise the Board of potential nonsubstantive rule amendments prior to submission. Nonsubstantive rule amendments are minor corrections and do not materially affect the outcome of the rule.

The nonsubstantive rule amendments are described on the attached document. If there are no objections by the Board, the Division will file these nonsubstantive amendments with the DAR by August 31, 2010.

I will be available to answer questions at the Board briefing on August 25, 2010 or I can be reached at 801-538-5328.

Attachment

**Utah Division of Oil, Gas & Mining**  
**Nonsubstantive Rule Edits**  
**August 3, 2010**

**Coal Program**

**R645. Natural Resources; Oil, Gas and Mining; Coal.**

**R645-100. Administrative: Introduction.**

**R645-100-200. Definitions.**

...

"Surface Operations and Impacts Incident to an Underground Coal Mine" means all operations involved in or related to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air, or water resources of the area including all activities listed in 40-10-3[(18)](20) of the Act and the definition of underground mining activities appearing herein.

*Comment: The statutory reference should be amended as a result of S.B. 214 in 1994 which added two new subsections to 40-10-3, thus the change from Subsection 18 to 20. Subsection 40-10-3(20) pertains to surface coal mining operations.*

**R645-106. Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.**

**R645-106-100. Scope.**

This rule implements the exemption contained in Section 40-10-3[(18)](20) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

*Comment: The statutory reference should be amended as a result of S.B. 214 in 1994 which added two new subsections to 40-10-3, thus the change from Subsection 18 to 20.*

**R645-301. Coal Mine Permitting: Permit Application Requirements.**

**R645-301-700. Hydrology.**

...

742.213. Any siltation structure[s] which impounds water will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

*Comment: This change corrects a grammatical error in the Coal hydrology rules, as recommended by staff. The Division has verified that the equivalent federal regulation is 30 CFR 817.46(b)(4) and it utilizes the word "structure."*

## Page 2

### Nonsubstantive Rule Edits

#### **R645-301. Coal Mine Permitting: Permit Application Requirements.**

##### **R645-301-800. Bonding and Insurance.**

...

880.320. At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Division will retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(2)(t) of the Act for reestablishing revegetation. No part of the bond or deposit will be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(2)(j) of the Act and by R645-301-751 or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(4) of the Act and R645-301-200. Where a silt dam is to be retained as a permanent impoundment pursuant to R645-301-700, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Division; and

...

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13[(a)](2)(b) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

*Comment: The statutory references to 40-10-17(t) and (j) in R645-301-880.320 omit Subsection number (2) prior to the letters (t) and (j). The statutory reference to 40-10-13(a) in R645-301-880.800 is also an error since the citation after Section 13 should always follow with a number. 40-10-13 is only three paragraphs in length, and this corrects to the proper subsection reference.*

## **Oil and Gas Program**

### **R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**

#### **R649-2. General Rules.**

##### **R649-2-9. Refusal to Agree.**

1. An owner shall be deemed to have refused to agree to bear his proportionate share of the costs of the drilling and operation of a well under Section 40-6-6.5[(6)] if:

1.1. The operator of the proposed well has, in good faith, attempted to reach agreement with such owner for the leasing of the owner's mineral interest or for that owner's voluntary participation in the drilling of the well.

## Page 3

### Nonsubstantive Rule Edits

1.2. The owner and the operator have been unable to agree upon terms for the leasing of the owner's interest or for the owner's participation in the drilling of the well.

2. If the operator of the proposed well shall fail to attempt, in good faith, to reach agreement with the owner for the leasing of that owner's mineral interest or for voluntary participation by that owner in the well prior to the filing of a Request for Agency Action for involuntary pooling of interests in the drilling unit under Section 40-6-6.5~~[(6)]~~ then, upon written request and after notice and hearing, the hearing on the Request for Agency Action for involuntary pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for negotiations between the operator and the owner.

*Comment: The two statutory references should be amended as a result of S.B. 83 in 1992 which repealed and re-enacted 40-6-6 and added 40-6-6.5 pertaining to nonconsenting owners. 40-6-6.5 is the proper section reference. The current reference to 40-6-6(6) only pertains to the Board's authority to modify an order that establishes a drilling unit.*

#### **R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**

##### **R649-3. Drilling and Operating Practices.**

##### **R649-3-23. Well Workover and Recompletion.**

...

6. For the purpose of qualifying for a tax credit under Utah Code Ann. Section 59-5-102~~[(3)]~~(6), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under Utah Code Ann. Section 59-5-102~~[(3)]~~(6) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval(s) that the well is currently completed in, but shall not include:

...

8. A recompletion that may qualify under Utah Code Ann. Section 59-5-102~~[(3)]~~(6) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval(s).

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of Utah Code Ann. Section 59-5-102~~[(3)]~~(6).

##### **R649-3-35. Wildcat Wells.**

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102~~[(2)(d)]~~(5)(b), an operator must file an application with the division for designation of a wildcat well.

...

3. The division shall review the submitted information and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102~~[(2)(d)]~~(5)(b).

**Page 4**

**Nonsubstantive Rule Edits**

**R649-3-37. Enhanced Recovery Project Certification.**

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102[(4)](7), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the Board after January 1, 1996:

2.1. As part of the process of certifying incremental production that qualifies for a reduction in the severance tax rate under Subsection 59-5-102[(4)](7), the operator shall furnish the Division:

...

*Comment: The six statutory references within R649-3 to the oil and gas severance tax law should be amended as a result of S.B. 191 in 2004. This bill included renumbering of the exemptions or tax reductions for well workovers, wildcat wells, and enhanced recovery projects, and thus the cross-references in the Board's rules should be changed.*